

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

GEORGE McGHEE, JR. #74919

PETITIONER

VERSUS

CIVIL ACTION NO. 3:08cv173-HTW-LRA

WARDEN CASTY

RESPONDENT

ORDER OF TRANSFER

This matter comes before this court, *sua sponte*, for consideration of the transfer of this cause. The petitioner, an inmate currently incarcerated in the East Mississippi Correctional Facility, Meridian, Mississippi, filed this request for habeas corpus relief pursuant to 28 U.S.C. § 2254. Petitioner states that on February 13, 2003, he was convicted of burglary of a dwelling in the Circuit Court of Amite County, Mississippi. He was then sentenced to 25 years in the custody of the Mississippi Department of Corrections.

The petitioner has previously filed for habeas relief in this court challenging the same conviction, *McGhee v. State of Mississippi*, 3:04cv630WSu (S.D. Miss. June 21, 2006). On June 21, 2006, this Court entered a final judgment dismissing the action with prejudice. The petitioner filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit on July 5, 2006. The Fifth Circuit dismissed his appeal on January 11, 2007, for want of prosecution. *McGhee v. State of Mississippi*, No. 06-61066 (5<sup>th</sup> Cir. Jan. 11, 2007).

The petitioner filed a second petition for habeas relief on September 14, 2006, in this court challenging the same conviction, *McGhee v. Warden Casty*, 3:06cv506-DPJ-JCS (S.D. Miss. Feb. 21, 2007). That civil action was transferred by order [10-1] of this court to the United States Court of Appeals for the Fifth Circuit on February 21, 2007, and was assigned

appeal number 07-60164. The Fifth Circuit on May 8, 2007, denied petitioner's request for authorization to file a successive habeas petition because he failed to timely comply with a notice of that court.

The petitioner filed a third petition for habeas relief on July 2, 2007, in *McGhee v. Warden Casty*, 3:07cv363-DPJ-JCS (S.D. Miss. July 6, 2007). An order [4] was entered on July 6, 2007, which determined that petition was a second or successive motion for habeas relief and that the petitioner had failed to obtain authorization from the United States court of appeals for the Fifth Circuit so that this court could consider said petition. The order [4] further directed that the habeas petition be transferred to the Fifth Circuit. The Fifth Circuit assigned it case number 07-60544 and denied the petitioner's request to file a successive § 2254 application on October 15, 2007. The Fifth Circuit also found that this was the petitioner's second motion seeking authorization to file a successive § 2254 petition and warned the petitioner that additional motions for such authorization that do not meet the requirements of § 2244(b) could result in the imposition of sanctions.

As previously held by this court, a petitioner who is filing a second or successive motion for habeas relief must first apply to the appropriate court of appeals for an order authorizing the district court to consider the successive motion. 28 U.S.C. § 2244(b)(3)(A). In the case at bar, the petitioner has failed to submit any documentation demonstrating that he has obtained the required authorization from the United States Court of Appeals for the Fifth Circuit. Therefore, this court has determined that in the interest of justice this cause should be transferred to the United States Court of Appeals for the Fifth Circuit for a determination whether this successive petition should be allowed. *See In Re Epps*, 127 F.3d 364 (5th Cir. 1997); 28 U.S.C. § 1631. Accordingly, it is hereby,

ORDERED that this petition for habeas corpus relief be, and the same hereby is, transferred to the United States Court of Appeals for the Fifth Circuit.

IT IS FURTHER ORDERED that the clerk of this court is directed to terminate all pending motions and to close this case pending the decision of the United States Court of Appeals for the Fifth Circuit.

This the 31<sup>st</sup> day of March, 2008.

s/ HENRY T. WINGATE

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CHIEF UNITED STATES DISTRICT JUDGE

Civil Action No. 3:08-cv-173  
Order of Transfer